IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9765 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANAGING DIRECTOR - Petitioner(s)
Versus
PANKAJ U CHAUHAN - Respondent(s)

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Appearance :
MR DEEPAK V PATEL for Petitioner,
MR RC PATHAK for Respondent,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/08/2007

ORAL JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the petitioner – Gujarat State Civil Supplies

Corporation Limited challenges the award dtd.28/6/1998 passed by the Presiding Officer Labour Court, Ahmedabad in Reference (LCA) No.2044 of 1992.

2. On an inspection made on 21/4/1990, officers of the petitioner found certain illegalities at the Petrol Outlet, the respondent named Pankaj U. Chauhan was caught and was required to give his statement. According to the petitioner, the said respondent Pankaj U.Chauhan in his own handwriting submitted his statement and the statement was countersigned by Mr.A.V. Brahmbhatt and Mr.R.B. Kothari, two officers of the petitioner. After finding that the respondent had committed misconduct, notice to show cause was issued to him, he submitted his reply, workman - Pankaj U.Chauhan was examined during the course of the inquiry, he was confronted with his statement dtd.21/4/1990 and he categorically stated that his statement was obtained under duress, pressure and coercion through the Presenting Officer. He stated that it was dictated to him and under the surcharged atmosphere, he took down the dictation and affixed his signature. He denied his total liability and explained the conduct.

3. It is to be noted that Mr.A.V. Brahmbhatt and Mr.R.B.

Kothari, who had countersigned the said statement, were not examined during the course of the inquiry, but the present petitioner simply relied upon the statement dtd.21/4/1990. On conclusion of the inquiry, a finding into the guilt of the respondent, was recorded. The respondent was issued second notice to show cause against proposed punishment of termination. The respondent submitted that as he has been found guilty, lesser punishment be awarded to him and he be not terminated from the service. However, the respondent was terminated, therefore, he came before the Labour Court.

4. The respondent contended before the Labour Court that he was not challenging the legality and propriety of the departmental inquiry, but was challenging the findings recorded during the course of the inquiry, as perverse. Present petitioner contended otherwise, but, however, the learned Labour Court held that the findings recorded by the inquiry officer / disciplinary authority, were absolutely perverse. After rejecting the findings, the learned Labour Court directed reinstatement of the respondent workman with 30% back wages. Being aggrieved by the said award, the petitioner establishment

is now before this Court under Article 227 of the Constitution of India.

5. Mr.Dipak Patel, learned counsel for the petitioner, after taking me through the statement dtd.21/4/1990, reply filed by the respondent to the second show cause notice and statements of respondent which were recorded during the course of the inquiry, submitted that the findings were in accordance with law and could not be said to be perverse. Placing reliance upon the judgment of the Supreme Court in the matter of Ashokkumar Sonkar Vs. Union of India (2007) 2 SCC (L&S) page 19, he submitted that ordinarily principles of natural justice are required to be observed, but in a case where process of observing principles of natural justice would be an exercise in futility, such principles are not required to be observed. He submitted that the approach of the learned Labour Court was patently illegal in holding that the findings were perverse.

6. Mr.Pathak, learned counsel for the respondent, on the other hand, submitted that the learned Labour Court was absolutely justified in making interference in the order of termination.

7. From the records it would appear that sheet anchor of

arguments of the petitioner is statement dtd.21/4/1990. When the respondent was examined during the course of the inquiry, he was confronted with his statement and the respondent immediately said that the said statement was obtained by exercising undue pressure and was a result of duress and coercion. He also told to the Presenting Officer that “you were dictating and I was simply writing it.”

8. Beyond that the department did not do anything. They did not examine Mr.A.V. Brahmbhatt and Mr.R.B. Kothari, even to say or suggest that the statements were recorded in their presence and those were voluntary and were not the result of duress or coercion. The manner in which the statements have been given, would show that the person who had dictated the statement dtd.21/4/1990 was acting as Presenting Officer, it is unheard of even in a departmental inquiry that a witness to a document is made a Presenting Officer, in fact, Mr.A.V. Brahmbhatt and Mr.R.B. Kothari, or at least one of them was required to be examined by the department to prove the correctness and genuineness of the statement dtd.21/4/1990. Except the word of the respondent that the statement dtd.21/4/1990 was result of duress and

coercion and was outcome of undue pressure, we do not have anything on the records.

9. So far as a plea of clemency / mercy in reply to the second show cause notice is concerned, I must immediately say that after a person is found guilty by the authority and some punishment is proposed to be awarded to him, then, he would always be entitled to say that lesser punishment be awarded to him. Such a plea would not amount to admission of the guilt. If such argument raised by the petitioner is accepted, it would lead to a chaotic situation, because, in no case, then a delinquent would be entitled to make a prayer for lesser punishment.

10. So far as the findings recorded by the learned Labour Court that the findings were perverse are concerned, this Court, after going through the contents of the award, must express its general agreement and approve the findings.

11. In the matter of Ashok Sonkar (supra), on which strong reliance is placed, facts were absolutely different, there the Supreme Court observed that the selection of the appellant before it was illegal, that he was not qualified on the cut-off date, being ineligible to be considered for

appointment, it would have been a futile exercise to give him an opportunity of being heard.

12. In the present matter, the court below was absolutely justified in holding that the findings were perverse. Once the findings were held to be perverse, then it was required on the part of the petitioner establishment to pray for an opportunity before the Labour Court to lead evidence and substantiate the charges, but it appears that they did not make any such prayer before the Labour Court. Once the Labour Court held that the findings were perverse and the person who was levelling charges was not demanding any opportunity to substantiate the allegations, then, the Court had ample jurisdiction to interfere in the matter. In the opinion of this Court, the Court below was absolutely justified in making the award in favour of the respondent workman.

13. Present is not a case of illegal appointment of an unqualified person. The respondent was delivery boy at Petrol Discharge Station, the petitioner did not say that his appointment was illegal, or certain circulars were required to be observed. The judgment of the Supreme

Court says that if principles of natural justice are observed in their true spirit and the result would not change, affording the opportunity of hearing would be an exercise in futility, then, such an opportunity may not be given. In the present case, the respondent, after issuing chargesheet themselves granted an opportunity of hearing and after finding the workman guilty, issued another notice to show cause and only thereafter passed the order of termination.

14. In the present matter, the respondent never challenged the inquiry on the ground of non-observance of principles of natural justice or on the ground of non-affording of appropriate defence opportunity, but he submitted that the findings recorded by the inquiry officer were perverse. Perversity would mean recording of a finding saying some evidence is available on the record which, in fact, is not available on the records or recording of a finding after ignoring the material evidence saying that there is no evidence on record or that such finding cannot be recorded by any prudent man. In the present matter, the inquiry officer recorded a finding on the basis of a document which was at all not proved.

15.I find no reason to interfere. The petition deserves to and is accordingly dismissed with costs quantified at Rs.5000=00 (Rupees Five Thousand only), to be paid by the petitioner to the respondent workman. Interim relief, if any, is vacated.

(R.S. GARG, J.)

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